

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 16957 of 2004

Date of Decision: 18.5.2007

Raj Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D.S. Patwalia, Advocate,
for the petitioner.

Ms. Ritu Bahri,
Deputy Advocate General, Haryana,
for respondent No. 1.

Mr. Gaurav Mohunta, Advocate,
for respondent No. 2.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 23.1.2004 (P-9) and 11.10.2004 (P-12), passed by the respondents terminating the services of the petitioner. The order dated 21.3.2004 (P-9) has been passed by the Chief Administrator, Haryana Urban Development Authority, Panchkula (Respondent No. 2), who is the punishing authority of the petitioner. Against the aforementioned order, the petitioner had preferred an appeal before the Financial Commissioner & Secretary to

Government of Haryana, Town and Country Planning Department (Respondent No. 1) on 3.3.2004 (P-11). The Financial Commissioner-respondent No. 1 has conveyed the order dated 11.10.2004 (P-12) through respondent No. 2 intimating dismissal of his appeal. It is appropriate to mention that the services of the petitioner have been terminated on the basis of his conviction recorded in FIR No. 168, dated 26.7.1998, under Sections 323/324/307/148/149 IPC, registered at Police Station Nissing, District Karnal. The learned Additional Sessions Judge has convicted the petitioner and awarded separate sentences for different offences. On appeal to this Court, the order of conviction was upheld whereas sentence, on account of some compromise, was considered to be sufficient to the extent that was already undergone.

Mr. D.S. Patwalia, learned counsel for the petitioner has raised a short submission that the order passed by the Financial Commissioner-respondent No. 1 does not answer the requirement of Regulation 18 of the Haryana Urban Development Authority Services Regulation, 1989 (for brevity, 'the Regulations'). It has been emphasised that the order passed by the appellate authority must contain reasons and such an order must be a speaking order. According to the learned counsel, the order passed by the appellate authority is a cryptic order and does not contain any reason whatsoever. Therefore, the order is liable to be set aside.

Mr. Gaurav Mohunta, learned counsel for respondent No.2 could not successfully counter the aforementioned argument.

Having heard learned counsel for the parties and perusing the paper book, we are of the considered view that the order dated 11.10.2004 (P-12) dismissing the appeal filed by the petitioner is not sustainable in the eyes of law. A perusal of Regulation 18 of the Regulations shows that all the rules of Haryana Civil Services (Punishment and Appeal) Rules, 1987, as applicable to the State of Haryana (for brevity, 'the 1987 Rules') would apply in matters relating to discipline, penalty and appeals to the members of the service of HUDA till such time HUDA frames its own regulations subject to the condition that the nature of penalty and the authority to impose such penalties as well as the appellate authority would be as specified in Appendix C and CI of the Regulations. Rule 9 of 1987 Rules recognises the right of appeal of an employee and according to Rule 11 the appellate authority is required to pass orders on the appeal. There is an obligation imposed by Rule 11 and the same reads as under:-

“11. Order which may be passed by appellate authority.

– (1) In the case of appeal against an order under rule 9 or any penalty specified in rule 4, the appellate authority shall consider;

(a) whether the facts on which the order was based have been established;

(b) where the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass such order as it thinks proper;

Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty not be increased.

(2) An authority from whose order, an appeal is preferred under these rules, shall give effect to any order made by the appellate authority.”

A perusal of the aforementioned rule shows that appellate authority is under an obligation to consider various aspects. It is required to be considered as to whether the facts on which the order is based were established and such facts afford sufficient ground for taking the action. It is further required to be considered whether the penalty is excessive, adequate or inadequate and then order by the appellate authority is required to be passed.

We may observe that the appellate authority is the only competent authority for re-appreciating evidence and to reach a conclusion different than the one recorded by the punishing authority. The Civil Court or the High Court in writ jurisdiction would not be competent to reverse the findings of fact except on the limited ground that the findings were bald, perverse and being without any evidence. (See **Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759**). Moreover, it is well settled that reasons are necessary link between the evidence/facts and the conclusions reached. In that

regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of **Union of India v. M.L. Copper**, AIR 1974 SC 87.

It is further evident from perusal of Rule 9 of the Rules that the appellate authority is required to 'consider' the case of the appellant and then pass order. The use of word 'consider' in Rule 9 necessarily implies due application of mind. For the aforementioned proposition we draw support from a judgment of Hon'ble the Supreme Court in the case of **R.P. Bhatt v. Union of India**, (1986) 2 SCC 651. Dealing with a similar rule, it has been observed in para 4 as under:-

“ 4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to

consider the relevant factors set forth in clauses (a), (b) and (c) thereof.”

The wholesome principle stated in the aforementioned para would fully apply to the facts of the present case. It becomes evident that the appellate order is a cryptic order and does not fulfil the requirement of Rule 9 of the Rules. There is no reason given. The order has simply been conveyed to the petitioner that his appeal has been dismissed. Therefore, the order is liable to be set aside.

For the reasons aforementioned, this petition succeeds. The order dated 11.10.2004 (P-12) is set aside. The matter is remanded back to the appellate authority for fresh consideration. We deem it just and appropriate to direct the appellate authority to decide the appeal of the petitioner afresh in accordance with law preferably within a period of four months from the date of receipt of a certified copy of this order. The time bound directions are necessary to be issued because the order of the appellate authority was passed on 11.10.2004 and sufficient time has lapsed since then.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 18, 2007
Pkapoor